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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/834,389	04/13/2001	Jerrold E. Franklin	3737.02-1	3452
7590	04/05/2004		EXAMINER	
DANIEL P. MAGUIRE 423 E STREET DAVIS, CA 95616			CANTELMO, GREGG	
			ART UNIT	PAPER NUMBER
			1745	

DATE MAILED: 04/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/834,389	FRANKLIN ET AL.
	Examiner	Art Unit
	Gregg Cantelmo	1745

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 29 January 2004.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 2-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 2-37 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 13 April 2001 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____. |

DETAILED ACTION

Response to Amendment

1. In response to the amendment received January 29, 2004:
 - a. Claim 1 has been cancelled. Claims 2-37 are pending;
 - b. The specification objection stands as modified in response to the amendment;
 - c. The claim objection is withdrawn in light of the cancellation of claim 21;
 - d. The prior art rejections are withdrawn.

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the separator being bent over or crimped *over the edge of said flexible membrane assembly so as to overlap a substantial portion of said flexible membrane assembly to prevent the release of reactants from the fuel cell* must be shown or the feature(s) canceled from the claim(s). No new matter can be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Specification

3. Applicant has not complied with one or more conditions for receiving the benefit of an earlier filing date as follows:

An application in which the benefits of an earlier application are desired must contain a specific reference to the prior application(s) in the first sentence of the specification of in an application data sheet (37 CFR 1.78(a)(2) and (a)(5)). The specific reference to any prior nonprovisional application must include the relationship (i.e., continuation, divisional, or continuation-in-part) between the applications except when the reference is to a prior application of a CPA assigned the same application number.

The amendment recites the continuing data in the first three sentences of the specification and should be in one sentence.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 2-37 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The claims as amended now recite that the edge portion of the separator plate is

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rolled, bent over or crimped *over the edge of said flexible membrane assembly so as to overlap a substantial portion of said flexible membrane assembly to prevent the release of reactants from the fuel cell.* There is no clear support for this arrangement as recited in the amendment and therefore raises new matter.

The only statement in the original disclosure as to the relationship between the separator and MEA is that the separator is bent, rolled, or crimped “against” the MEA (page 11, ll. 8-11). The specification does not define the degree or extent of how exactly the separator is bent, rolled or crimped “against” the MEA and absent such cannot be held to sufficiently teach the particular arrangement as defined in claims 2-37 (in particular, the specification lacks sufficient description to support the amendment to claims 2 and 23 as to the separator being bent over or crimped *over the edge of said flexible membrane assembly so as to overlap a substantial portion of said flexible membrane assembly to prevent the release of reactants from the fuel cell*). Further the drawings fail to show this arrangement and lack support for this description since the figures showing the bent separator fail to include the MEA and thus lack sufficient disclosure to show the relationship defined in claims 2-37.

Thus the claims as amended raise new matter issues.

6. Claims 2-37 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for bending, rolling or crimping the separator against the MEA, does not reasonably provide enablement for the separator being bent over or crimped *over the edge of said flexible membrane assembly so as to overlap a substantial portion of said flexible membrane*

assembly to prevent the release of reactants from the fuel cell. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make the invention commensurate in scope with these claims. See the previous item for further details.

Conclusion

7. Due to the significant 112 issues set forth above pertaining to the new matter introduced into the claims, no determination of allowability can be made since the scope of the pending claims extends beyond the support of the original disclosure of the instant application at the time the instant application was filed.

Applicant is advised that any attempts to overcome the 112 rejections after final will require further consideration and search and will not be entered.

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will

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the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregg Cantelmo whose telephone number is (571) 272-1283. The examiner can normally be reached on Monday to Thursday from 9 a.m. to 6 p.m. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Pat Ryan, can be reached on (571) 272-1292. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306. FAXES received after 4 p.m. will not be processed until the following business day. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Gregg Cantelmo
Primary Examiner
Art Unit 1745

gc

April 1, 2004